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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEAN-CLAUDE HAUER and FRANCIS BERTHON

Appeal 2009-010176
Application 10/684,464
Technology Center 3600

Before WILLIAM F. PATE, III, STEFAN STAICOVICI, and
FRED A. SILVERBERG, *Administrative Patent Judges*.

STAICOVICI, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Jean-Claude Hauer and Francis Berthon (Appellants) appeal under 35 U.S.C. § 134 from the Examiner's final decision rejecting claims 1, 3, 6, 9, 12, 19, 27, 28, 30, and 31 under 35 U.S.C. § 102(b) as anticipated by Lovatt (US 2,012,885, issued Aug. 27, 1935) and claims 2, 10, 11, 18, 25, 26, and 32 under 35 U.S.C. § 103(a) as unpatentable over Lovatt.

Claims 7, 15-17, and 22-24 have been canceled and claims 4, 5, 8, 13, 14, 20, 21, 29, 33, and 34 are objected to as being dependent upon a rejected base claim.

Appellants' representative presented oral argument on February 10, 2011. We have jurisdiction over this appeal under 35 U.S.C. § 6.

THE INVENTION

Appellants' invention relates to a device for closing an opening including a cover 6, a frame 4, a cover knuckle 20, a frame hinge knuckle 18, a pass-through hinge knuckle opening 40 connecting an inner recess 19 with an outer recess 50, and an inserted plug 52. Spec. 3, l. 15; Spec. 4, ll. 14-19; Spec. 5, ll. 16-17; and fig. 1.

Claim 27 is representative of the claimed invention and reads as follows:

27. A closing device, comprising:
a frame disposed in an access opening and including a hinge receiving portion;
a cover which closes the access opening and comprises a hinge portion which is received by the frame at said hinge receiving portion;
and
a plug separate from said cover and disposed below the hinge portion of the cover;

wherein the hinge receiving portion includes an outer recess, an inner recess and a pass-through opening through which the outer recess and the inner recess communicate; and

wherein the hinge portion of the cover is received in the outer recess of the hinge receiving portion and said plug is disposed in the inner recess and substantially closes an opening of the inner recess at least when the cover is closed.

SUMMARY OF DECISION

We AFFIRM-IN-PART.

ANALYSIS

Claims 1-3, 6, 9, 10-12, 18, 19, and 25-28

Independent claim 1 recites “a pass-through hinge knuckle opening (40) that is located between an outer recess open to the outer side of the frame and an inner recess open to the inner side of the frame.” Similarly, independent claim 27 recites “a pass-through opening through which the outer recess and the inner recess communicate.” App. Br., Claims Appendix.

The Examiner found that Lovatt teaches:

... a pass through hinge knuckle opening (fig. 5: top opening of knuckle where numeral 46 is and adjacent to top of 30) between the outside and inside, ... the inner recess (space occupied by numeral 39, fig. 5) ...

Ans. 3.

Appellants argue that “the recited opening (40) is located between two *distinct recesses*, an outer recess (i.e., 19) and an inner recess (i.e., 50),” whereas Lovatt shows only one recess 33 open to both the inside and the outside of the frame. Reply Br. 5.

We agree with Appellants that Lovatt shows only one recess 33. *See* Lovatt, fig. 5. We could not find any portion of Lovatt and the Examiner has not pointed to any portion of Lovatt that shows an opening located between an outer recess and an inner recess, as called for by each of independent claims 1 and 27. Accordingly, Lovatt does not teach all the limitations of independent claims 1 and 27. Therefore, the rejection of claims 1 and 27, and their respective dependent claims 3, 6, 9, 12, 19, and 28, under 35 U.S.C. § 102(b) as anticipated by Lovatt, cannot be sustained.

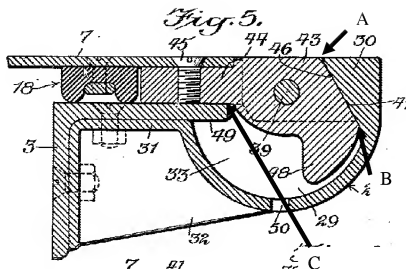
With respect to the rejection of claims 2, 10, 11, 18, 25, and 26, the Examiner's proposed modification of Lovatt does not cure the deficiencies of Lovatt as shown above. *See* Ans. 4-5. Accordingly, the rejection of claims 2, 10, 11, 18, 25, and 26 under 35 U.S.C. § 103(a) as unpatentable over Lovatt likewise cannot be sustained.

Claims 30-32

At the outset, we note that independent claim 30 does not require an outer recess and an inner recess, but merely "a recess below the end of the cover." App. Br., Claims Appendix.

The Examiner found that hook 48 of Lovatt's hinge knuckle 43 constitutes the recited "plug" and that it is located in a recess 33. Ans. 3. Appellants argue that because "hook 48 is provided at the end of the *actual hinge portion* [knuckle 43] of Lovatt's cover structure," hook 48 cannot be "disposed in a recess below the end of the cover," as called for by claim 30. Reply Br. 6.

An annotated Figure 5 of Lovatt is reproduced below:



Annotated Figure 5 of Lovatt depicts an end AB of the cover 7, 43 and a plug BC, which we find is denoted by numeral 48.

As shown above, Lovatt teaches a frame 3 having a frame knuckle 30, a cover including door plate 7 and knuckle 43, and a plug BC (hook 48) such that (1) frame knuckle 30 receives an end AB of the cover 7, 43, (2) plug BC (hook 48) is disposed in a recess 33 below the end of the cover AB, and (3) plug BC (hook 48) substantially closes an opening 50 in recess 33 when the cover is in a closed position. Hence, although we appreciate Appellant's position that hook 48 of Lovatt is a part of knuckle 43 of the cover 7, nonetheless, hook 48 (plug BC) is located in a recess 33 below the end AB of the cover 7, 43. *See App. Br. 11.* Therefore, we agree with the Examiner that plug BC (hook 48) of Lovatt constitutes the recited "plug." Ans. 3. In conclusion, for the foregoing reasons, the rejection of claim 30 under 35 U.S.C. § 102(b) as anticipated by Lovatt is sustained.

Claim 31, which depends from claim 30, adds the limitation of an opening between an upper recess and a lower recess. However, as discussed *supra*, Lovatt teaches only one recess, namely, recess 33. Hence, Lovatt does not teach both an upper recess and a lower recess, as called for in claim

31. Accordingly, the rejection of claim 31 under 35 U.S.C. § 102(b) as anticipated by Lovatt, cannot be sustained.

With respect to the rejection of claim 32, which depends from claim 31, the Examiner's proposed modification of Lovatt does not cure the deficiencies of Lovatt as shown above. *See* Ans. 4-5. Therefore, the rejection of claim 32 under 35 U.S.C. § 103(a) as unpatentable over Lovatt likewise cannot be sustained.

SUMMARY

The decision of the Examiner is affirmed as to claim 30 and reversed as to claims 1, 2, 3, 6, 9-12, 18, 19, 25-28, 31, and 32.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

mls

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